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BARNES & THORNBURG

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group: 3738
Confirmation No.: 9094
Application No.: 10/044,031
Invention: **Purified Submucosa Graft Material**
Applicant: Stephen F. Badylak
Filed: January 11, 2002
Attorney
Docket: 3220-69262
Examiner: Unknown

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231

on November 12, 2002

Rebecca Ball
(Signature)

Rebecca Ball
(Printed Name)

RECEIVED
NOV 19 2002
OFFICE OF PETITIONS

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R. §1.47(a)

Box DAC
Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants hereby petition for a one-month extension of time under 37 C.F.R. §1.136(a) to file this Request, extending the due date for response to November 12, 2002. The period for response was set to expire on October 12, 2002. Our check 319919 in the amount of \$110.00 for a one-month extension of time under 37 C.F.R. §1.17(a) accompanies this Request.

The captioned application was filed on January 11, 2002, with an unsigned declaration naming Stephen F. Badylak, Michael C. Hiles, and Steve A. Kahn as co-

inventors. The claims of the captioned application are copied (see "Notice of Claims Copied," filed in the captioned application on May 30, 2002) substantially from the claims of U.S. Patent No. 6,206,931, assigned to Cook, Inc., Cook Biotech, Inc., and Med Institute, Inc. The subject matter of the present claims is based on research conducted at Purdue University. One of the named co-inventors of the captioned application, Michael C. Hiles, a former employee of Purdue University, and on information and belief, presently an employee of Cook Biotech, Inc., is a named co-inventor in U.S. Patent No. 6,206,931 (from which claims were copied for the above-captioned application).

On February 8, 2002, Applicants' undersigned attorney received a Notice to File Missing Parts of Nonprovisional Application for the captioned application, the notice requesting the submission of an executed declaration. On February 22, 2002, Applicants' undersigned attorney mailed a letter transmitting a copy of the captioned application and a copy of the unsigned declaration for signature and return. The letter, application, and signature copy of the declaration for Michael C. Hiles was sent to Kenneth Gandy, Esquire, known to be patent counsel representing Cook Biotech, Inc., the employer of Michael C. Hiles, and one of the co-assignees of U.S. Patent No. 6,206,931 from which claims of the captioned application were copied. Another copy of that letter was sent to Kenneth Gandy on March 20, 2002. No response was received.

Applicants' undersigned attorney set forth these facts in a Petition Under 37 C.F.R. § 1.47(a) filed on May 30, 2002 in the captioned application. The petition was dismissed by the Office of Petitions in an action mailed on August 12, 2002. According to the Petitions Attorney, the petition failed to establish that Kenneth Gandy represents both Michael C. Hiles and his employer, and, therefore, the petition did not establish that Michael C. Hiles or his legal representative received a copy of the application papers and thereafter refused to execute the declaration.

On September 27, 2002, Applicants' undersigned attorney sent a letter by certified mail with return receipt requested to Michael C. Hiles at his last known address. Copies of the two letters previously sent to Kenneth Gandy, an unexecuted Declaration and Power of Attorney, and copies of the application papers were enclosed with the September 27 letter. A copy of the September 27 letter sent to co-inventor Hiles, with the United States Postal Service sticker showing the certified article number attached, is transmitted herewith as Exhibit A. A copy of the certified mail return receipt is also transmitted herewith as Exhibit B showing that the letter and enclosures were delivered to and accepted by Michael C. Hiles on October 9, 2002 (*i.e.*, Michael Hiles signed the certified mail return receipt).

The September 27 letter (delivered on October 9, 2002) stated that if a response was not received within 10 days, it would be assumed that co-inventor Hiles does not intend to sign the declaration. To date, Applicants' undersigned attorney has not received the signed declaration from Michael C. Hiles or any oral or written response from co-inventor Hiles; nor does the undersigned attorney expect to receive the signed declaration or any response from co-inventor Hiles. On March 14, 2002, Cook Group, Inc., on information and belief a parent corporation of the co-assignees of U.S. Patent No. 6,206,931, filed suit against Purdue Research Foundation in the U.S. District Court for the Southern District of Indiana (Indianapolis), Docket: IP 02-0406 C. Count III of the Complaint relates to the inventorship of U.S. Patent No. 6,206,931. A copy of the relevant portion of the Complaint was transmitted with the Petition Under 37 C.F.R. § 1.47(a) filed on May 30, 2002 in the captioned application. With view of the filing of the lawsuit by Cook Group, Inc., the undersigned attorney does not expect cooperation from co-inventor Hiles to execute the tendered declaration for the captioned application.

Thus, a bona fide attempt was made to present a copy of the captioned application and a signature copy of the declaration to co-inventor Michael C. Hiles, but no

response was received nor is expected. Accordingly, co-inventors/co-applicants Stephen F. Badylak and Steve A. Kahn hereby petition the Commissioner under 37 C.F.R. §1.47(a) to proceed with the prosecution of the captioned application on behalf of them and non-cooperative co-inventor Michael C. Hiles. The last known address of each of the co-inventors is as follows:


Steve A. Kahn
1305 E. Washington
South Bend, Indiana 46617

Stephen F. Badylak
1150 Kingswood Rd., South
West Lafayette, Indiana 47906

Michael C. Hiles
4326 S. 900 East
Lafayette, Indiana 47905

A check in the amount of \$130 in payment of the petition fee under 37 C.F.R. §1.17(h) was transmitted with the Petition Under 37 C.F.R. § 1.47(a) filed on May 30, 2002, in the captioned application. The Commissioner is hereby authorized to charge any additional fees which may be required or credit any overpayment to our Deposit Account No. 10-0435, with reference to our matter 3220-69262. A duplicate copy of this paper is enclosed for that purpose.

Respectfully submitted


Steven R. Lammert
Registration No. 27,653
Attorney for Applicants

SRL:gl
Indianapolis, Indiana 46204
317-231-7258

BARNES & THORNBURG



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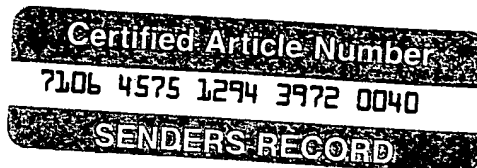
www.btlaw.com

September 27, 2002

Dr. Michael C. Hiles
4326 South 900 East
Lafayette, Indiana 47905

**Via Certified Mail, Return
Receipt Requested**

Re: U.S. Patent Application Serial No. 10/044,031
Purified Submucosa Graft Material
Purdue Reference No.: P-01080.00.US
Our Reference: 3220-69262



Dear Dr. Hiles:

Enclosed herewith are copies of correspondence that I sent to Ken Gandy back in February and March of this year regarding the subject utility patent application. The letters transmitted a copy of the subject patent application along with a Declaration and Power of Attorney for signature by you as a named co-inventor. I asked Mr. Gandy to transmit the application and Declaration to you for signature and to return the signed Declaration to me. The papers also included an Assignment of rights in the invention to Purdue Research Foundation, it being PRF's contention that the claimed invention was made by you and the named co-inventors, Stephen F. Badylak and Steve Kahn before you left your position at Purdue.

Having not received any response from either you or Mr. Gandy, I am obliged to direct a copy of the patent application, along with a Declaration and Power of Attorney, to you directly with a request that you review the papers thoroughly, and either sign the Declaration and return it to me, or give me the courtesy of a note indicating your refusal to sign the document.

You understand, of course, that I am sending you these documents as attorney for Purdue Research Foundation. I do not represent you or your employer and I invite you to contact your personal counsel and/or counsel for your employer in this regard. I have copied Mr. Gandy on this letter with attachments.

If it is your decision not to sign the enclosed Declaration and Power of Attorney, I would appreciate it if you would sign the enclosed copy of this letter in the space provided at the bottom and return it to me in the enclosed pre-addressed, stamped envelope. I will assume, if I do not hear back from you within the next 10 days, that you do not intend to sign the inventor declaration. I suggest you address any questions you have in this regard to your personal attorney and/or counsel for your employer.

Very truly yours,
BARNES & THORNBURG


Steven R. Lammert

RECEIVED

NOV 19 2002

OFFICE OF PETITIONS

SRL:glr

Enclosures

cc: Kenneth Gandy, Esquire (w/encls.)

EXHIBIT A

Indianapolis

Fort Wayne

South Bend

Elkhart

Chicago

Washington, D.C.

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To: Steven R. Lammert
Barnes & Thornburg

Re: U.S. Patent Application Serial No. 10/044,031
Purified Submucosa Graft Material
Purdue Reference No.: P-01080.00.US
Our Reference: 3220-69262

I, Michael C. Hiles, hereby give notice that I am unwilling to sign the inventor Declaration which I received with a copy of the subject patent application.

Michael C. Hiles

Date: _____

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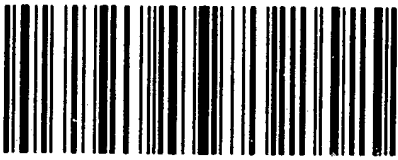
2. Article Number  7106 4575 1294 3972 0040		COMPLETE THIS SECTION ON DELIVERY	
3. Service Type CERTIFIED MAIL		A. Received by (Please Print, Clearly) Michael Hiles	B. Date of Delivery OCT - 9 2002
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		C. Signature X <i>Michael Hiles</i>	
1. Article Addressed to: Dr. Michael C. Hiles 4326 South 900 East Lafayette, Indiana 47905		<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee D. Is delivery address different from item 1? If YES, enter delivery address below: <input checked="" type="checkbox"/> No	
		Reference Information 3220-69262 S. Lammert	
RE:		SENDER:	
PS Form 3811, June 2000		Domestic Return Receipt	

EXHIBIT B